



# COUNTY OF LOS ANGELES

## DEPARTMENT OF PUBLIC WORKS

*"To Enrich Lives Through Effective and Caring Service"*

900 SOUTH FREMONT AVENUE  
ALHAMBRA, CALIFORNIA 91803-1331  
Telephone: (626) 458-5100  
[www.ladpw.org](http://www.ladpw.org)

DONALD L. WOLFE, Director

ADDRESS ALL CORRESPONDENCE TO:  
P.O. BOX 1460  
ALHAMBRA, CALIFORNIA 91802-1460

July 27, 2006

IN REPLY PLEASE

REFER TO FILE: **PD-4**

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Dear Supervisors:

**MONTANA AVENUE AND WILSHIRE BOULEVARD  
LOW-FLOW DIVERSION FACILITIES  
REVISED COUNTY-CITY OF SANTA MONICA  
COOPERATIVE AGREEMENT NO. 73728  
SUPERVISORIAL DISTRICT 3  
3 VOTES**

### **IT IS RECOMMENDED THAT YOUR BOARD:**

Approve and instruct the Mayor to sign the enclosed Revised Agreement between the County and the City of Santa Monica to construct low-flow diversion facilities near Montana Avenue and Wilshire Boulevard in the City of Santa Monica. The Revised Agreement provides for the County to further assist the City by performing engineering and inspection services for the project at County expense. Under the terms of the Revised Agreement, the City is to finance the remaining project costs in excess of the County's financial contribution of \$50,000 for preliminary engineering and the County's contribution of in-kind engineering and inspection services. The Revised Agreement further provides for the City to seek additional grant funding for the project. If such funding is obtained, the City is to reimburse the County for the cost of engineering and inspection services, currently estimated to be \$400,000.

### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

On December 11, 2001, Synopsis 35, your Board approved Agreement No. 73728 between the County and the City of Santa Monica, which provides for the City to design and construct the Montana Avenue and Wilshire Boulevard Low-Flow Diversion Facilities project with the County to contribute a maximum amount of \$50,000 toward the development of the design concept. The low-flow diversions will divert dry weather urban runoff to the Los Angeles Hyperion Treatment Plant for treatment, which will enhance water quality at the beach.

The City has completed the development of the design concept for the project. The City now requests that the County perform in-kind engineering and inspection services for the project at County expense. The City has agreed to seek additional grant funding for the project. If such funding is obtained, the City will reimburse the County for the cost of the engineering and inspection services, currently estimated to be \$400,000.

The Montana Avenue and Wilshire Boulevard storm drains are owned and operated by the Los Angeles County Flood Control District. This project is a key element in the County's overall strategy to comply with the Santa Monica Bay Beaches Dry Weather Bacteria Total Maximum Daily Load requirements set by the Los Angeles Regional Water Quality Control Board.

Your Board's approval of the enclosed Revised Agreement is necessary for the delegation of responsibilities and the cooperative financing of the project.

### **Implementation of Strategic Plan Goals**

This action is consistent with the County Strategic Plan Goal of Service Excellence since it will enhance water quality in the Santa Monica Bay.

### **FISCAL IMPACT/FINANCING**

The total project cost is estimated to be \$4,572,000, with the City's share being \$4,122,000 and County's share being \$450,000.

Funding for the County's contribution of \$400,000 in the form of in-kind engineering and inspection services is included in the Fiscal Year 2006-07 Flood Control District Fund Budget. If the City is successful in obtaining additional grant funds for the project, the County will be reimbursed for the cost of the engineering and inspection services. The County's financial contribution of \$50,000 toward the development of the design concept was paid to the City in Fiscal Year 2001-02.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

The enclosed Revised Agreement, which has been approved as to form by County Counsel, provides for the County to contribute \$50,000 toward the cost of the development of the design concept prepared by the City and to perform engineering and inspection services for the project at County expense.

### **ENVIRONMENTAL DOCUMENTATION**

On December 11, 2001, Synopsis 35, your Board found this project to be categorically exempt from the provisions of the California Environmental Quality Act, pursuant to Sections 15301 (b) and 15303 (d) of the California Environmental Quality Act Guidelines.

### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

This project will not have a significant impact on other projects currently planned. The County's financial contribution of \$50,000 toward the development of the design concept was paid to the City in Fiscal Year 2001-02. Upon completion of construction, the City will be responsible for future operation, maintenance, and repair of the low-flow diversion facilities.

This project will not have a significant impact on the net County cost.

The Honorable Board of Supervisors  
July 27, 2006  
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**CONCLUSION**

Enclosed are three originals of the Revised Agreement, which have been executed by the City of Santa Monica and approved as to form by County Counsel. Upon approval, please return two fully executed originals of the Revised Agreement with one adopted copy of this letter to Public Works for further processing. The Revised Agreement labeled COUNTY ORIGINAL is to be retained for your files.

Respectfully submitted,

DONALD L. WOLFE  
Director of Public Works

TC:sc

C070000

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Enc.

cc: Chief Administrative Office  
County Counsel

REVISED AGREEMENT NO. 73728

THIS REVISED AGREEMENT, made and entered into by and between the CITY OF SANTA MONICA, a municipal corporation in the County of Los Angeles, (hereinafter referred to as CITY), and the COUNTY OF LOS ANGELES, a political subdivision of the State of California, (hereinafter referred to as COUNTY):

W I T N E S S E T H

WHEREAS, COUNTY is administering all matters for the Los Angeles County Flood Control District, (hereinafter referred to as DISTRICT), pursuant to Section 56-3/4 of COUNTY'S Charter and in accordance with an Agreement approved on December 26, 1984, between COUNTY and DISTRICT; and

WHEREAS, CITY and COUNTY have executed AGREEMENT NO. 73728, on December 11, 2001, which provides for CITY to design and construct two low-flow diversion systems and structural Best Management Practices (BMPs) to divert dry weather urban runoff near Montana Avenue and Wilshire Boulevard to the Los Angeles Hyperion Plant for treatment, (hereinafter referred to as PROJECT); and

WHEREAS, PROJECT is entirely within the jurisdictional limits of CITY; and

WHEREAS, the locations of PROJECT are at Palisades Park and CITY streets near the intersections of Ocean Avenue and Montana Avenue, and Ocean Avenue and Wilshire Boulevard as shown on Exhibits A and B, which are attached hereto and incorporated herein by this reference; and

WHEREAS, COUNTY is willing to finance a portion of the PRELIMINARY ENGINEERING cost, as defined herein, in an amount not to exceed Fifty Thousand and 00/100 Dollars (\$50,000.00) and previously, on May 22, 2002, deposited this amount with City, (hereinafter referred to as COUNTY'S FINANCIAL CONTRIBUTION); and

WHEREAS, CITY has completed PRELIMINARY ENGINEERING for PROJECT,

WHEREAS, CITY has requested that COUNTY perform DESIGN, CONSTRUCTION ENGINEERING, and CONSTRUCTION INSPECTION services, as defined herein, required for PROJECT at COUNTY'S expense while CITY seeks additional funding for PROJECT; (hereinafter referred as COUNTY'S SERVICE CONTRIBUTION); and

WHEREAS, COUNTY is willing to provide the requested services; and

WHEREAS, CITY is willing to reimburse COUNTY for the costs of COUNTY'S SERVICE CONTRIBUTION if CITY obtains such additional funding for PROJECT; and

WHEREAS, the estimated construction contract cost for PROJECT is Two Million Four Hundred Eighteen Thousand and 00/100 Dollars (\$2,418,000.00) for the Low-Flow Diversion System and structural BMP at Montana Avenue and One Million Seven Hundred Four Thousand and 00/100 Dollars (\$1,704,000.00) for the Low-Flow Diversion System and structural BMP at Wilshire Boulevard; and

WHEREAS, CITY is willing to finance the CONSTRUCTION COSTS of PROJECT as defined herein; advertise a contract for construction bids; award and administer the construction contract; and perform construction contract administration, and survey for PROJECT at no cost to COUNTY; and

WHEREAS, CITY is willing to finance the remaining costs necessary to complete PROJECT in excess of COUNTY'S FINANCIAL CONTRIBUTION AND COUNTY'S SERVICE CONTRIBUTION.

NOW, THEREFORE, in consideration of the mutual benefits to be derived by CITY and COUNTY and of the premises herein contained, it is hereby agreed to replace the original Agreement No. 73728 entirely with the following provisions:

Section (1) DEFINITIONS:

- a. PRELIMINARY ENGINEERING, as referred to in this REVISED AGREEMENT, shall mean development of the concept design for PROJECT.
- b. DESIGN, as referred to in this REVISED AGREEMENT, shall mean design survey, utility investigation, hydraulic analysis, geotechnical investigation, and preparation of drainage, mechanical, and electrical plans, which include an aboveground control panel, technical specifications, and cost estimates.
- c. CONSTRUCTION COSTS as referred to in this REVISED AGREEMENT, shall consist of the costs of construction contract, construction contract administration, construction survey, utility relocation, traffic detours, final signing and striping, and all other work necessary to construct PROJECT in accordance with the CITY approved bid documents, which include all plans and specifications for PROJECT. CONSTRUCTION COSTS shall not include the cost of PRELIMINARY ENGINEERING and DESIGN, CONSTRUCTION ENGINEERING, and CONSTRUCTION INSPECTION.
- d. CONSTRUCTION ENGINEERING, as referred to in this REVISED AGREEMENT, shall mean engineering work necessary to ensure compliance with the final plans and any required changes and modifications to final plans for PROJECT necessitated by unforeseen or unforeseeable field conditions encountered during construction of PROJECT.

- e. CONSTRUCTION INSPECTION, as referred to in this REVISED AGREEMENT, shall mean inspection and material testing of construction work to cause PROJECT to be constructed in accordance with the approved plans.
- f. RIGHT-OF-WAY ACQUISITION, as referred to in this REVISED AGREEMENT, shall include all of the following: investigation and preparation of search maps for right-of-way identification, property appraisals, title reports, and legal descriptions; acquisition of all land, easements necessary for PROJECT including negotiations, condemnation activities, and escrow costs; clearing and restoring any improvements within the right of way necessary to construct PROJECT; obtaining permits to enter non-CITY property to construct PROJECT; incidental and litigation expense, and all other work necessary to acquire the right of way necessary for PROJECT.

Section (2) CITY AGREES:

- a. To finance the cost of PRELIMINARY ENGINEERING in excess of COUNTY'S FINANCIAL CONTRIBUTION as set forth in Section (3) a. below.
- b. To finance One Hundred Percent (100%) of CONSTRUCTION COSTS for PROJECT.
- c. To finance the remaining costs necessary to complete PROJECT in excess of COUNTY'S FINANCIAL CONTRIBUTION and COUNTY'S SERVICE CONTRIBUTION per Section (3) below.
- d. To actively seek additional grant funding for PROJECT and reimburse COUNTY for the costs of COUNTY'S SERVICE CONTRIBUTION, currently estimated to be Four Hundred Thousand and 00/100 Dollars (\$400,000.00), if such additional funding for PROJECT is secured.
- e. To perform, or cause to be performed, PRELIMINARY ENGINEERING, required environmental documentation, environmental permits, hydrologic analysis, traffic detour plan for PROJECT, and all other necessary work, except DESIGN, prior to advertising of PROJECT for construction bids.
- f. To prepare and obtain any necessary documents or approvals required to comply with the California Environmental Quality Act for PROJECT.
- g. To make efforts to obtain community support for PROJECT.

- h. To obtain all necessary permits and approvals prior to advertising PROJECT for construction bids. CITY hereby represents and warrants to have sufficient control and possession of all property and/or right of way necessary to construct and complete PROJECT.
- i. To issue notices to public utility organizations and private owners regarding the relocation, removal, operation, maintenance, etc., of all surface and underground utilities, structures, and transportation services which interfere with the proposed construction. Where utilities have been installed in public streets or on public property, CITY will obtain the revisions or relocation of the interfering utility and provide the necessary right-of-way for these utilities.
- j. To furnish COUNTY, within thirty (30) days of the full execution of this REVISED AGREEMENT, CITY'S consultant's invoices for the preparation of PRELIMINARY ENGINEERING for PROJECT, including an itemization of the completed conceptual design tasks for PROJECT. If the actual cost for PRELIMINARY ENGINEERING is less than the Fifty Thousand and 00/100 Dollars (\$50,000.00) that COUNTY has previously deposited with CITY for PRELIMINARY ENGINEERING, then CITY shall refund the difference to COUNTY.
- k. To review and approve the final plans for PROJECT.
- l. To advertise PROJECT for construction bids; to award and administer the construction contract; to perform construction survey; to change or modify plans as needed subject to COUNTY approval; and to cause PROJECT to be constructed in accordance with said plans and specifications.
- m. To perform RIGHT-OF-WAY ACQUISITION, as defined herein, at CITY'S expense.
- n. To accept ownership and thereafter be responsible for and pay all costs associated with the operation and maintenance of PROJECT, upon its completion.
- o. To be responsible for the water quality sampling, monitoring, and documenting the effectiveness of PROJECT on a monthly basis, and to share data and results with COUNTY.
- p. To ensure that CITY contractor adds the County of Los Angeles, the Los Angeles Flood Control District, and their officers, employees, and agents as additional insureds on their insurance policies, including comprehensive general liability and automobile policies, with the minimum limits of coverage per Subsection 7-3 of the Standards Specifications for



Public Works Construction and Exhibit C, which is attached hereto and incorporated herein by this reference.

**Section (3) COUNTY AGREES:**

- a. To provide COUNTY FINANCIAL CONTRIBUTION, a maximum amount of Fifty Thousand and 00/100 Dollars (\$50,000.00), for financing a portion of the PRELIMINARY ENGINEERING costs.
- b. To provide COUNTY SERVICE CONTRIBUTION, in the form of DESIGN, CONSTRUCTION ENGINEERING, and CONSTRUCTION INSPECTION services, required for PROJECT at COUNTY'S expense, subject to CITY obtaining additional funding for PROJECT as set forth in Section (2) d. above.

**Section (4) IT IS MUTUALLY UNDERSTOOD AND AGREED AS FOLLOWS:**

- a. COUNTY shall not be responsible for the expense of relocation, alteration, and/or modification of PROJECT once installed which may be, necessitated by future street improvements, realignments, or reconstruction.
- b. CITY will complete the construction of PROJECT within twenty four (24) months of the date of COUNTY'S completion of DESIGN (the "COMPLETION DATE"). Failure to do so shall give COUNTY the right to cause the provisions of this REVISED AGREEMENT to be null and void, and CITY will immediately reimburse COUNTY for the costs of DESIGN, CONSTRUCTION ENGINEERING, and CONSTRUCTION INSPECTION for PROJECT within thirty (30) days of invoice from COUNTY. Notwithstanding the foregoing, if the CITY is delayed or hindered from completion of construction of PROJECT by reason of FORCE MAJEURE, then the COMPLETION DATE shall be extended for a period equivalent to the period of such delay. FORCE MAJEURE shall mean the unforeseeable refusal to grant or denial, revocation, or moratorium of or by applicable governmental authorities of building permits, unreasonable delays in obtaining governmental approvals or delays due to strikes, inclement weather, fire, acts of God, riot, insurrection, or war.
- c. CITY shall have the right to reject all bids after notifying COUNTY and may re-advertise PROJECT if such action is in the best interests of CITY.
- d. During construction of PROJECT, COUNTY shall furnish an inspector (COUNTY'S INSPECTOR) to perform construction inspection services. The COUNTY INSPECTOR shall inspect construction to assure that it is in compliance with the approved plans and specifications for the PROJECT.

However, the COUNTY INSPECTOR shall not be authorized to issue change orders or directives without prior CITY consent. CITY, not COUNTY, shall be responsible for any directive(s) to the contractor.

- e. This REVISED AGREEMENT may be modified only by the mutual written consent of COUNTY and CITY. Modifications of a nonmaterial nature may be made by the mutual written consent of the parties' Directors of Public Works or their delegates.
- f. Each party shall have no financial obligation to the other party under this REVISED AGREEMENT, except as herein expressly provided.
- g. Neither COUNTY nor any officer or employee of COUNTY shall be responsible for any damage or liability occurring by reason of any acts or omissions on the part of CITY under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of CITY under this REVISED AGREEMENT. It is also understood and agreed that, pursuant to Government Code, Section 895.4, CITY shall fully indemnify, defend, and hold COUNTY harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of any acts or omissions on the part of CITY under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of CITY under this REVISED AGREEMENT.
- h. Neither CITY nor any officer or employee of CITY shall be responsible for any damage or liability occurring by reason of any acts or omissions on the part of COUNTY under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of COUNTY under this REVISED AGREEMENT. It is also understood and agreed that, pursuant to Government Code, Section 895.4, COUNTY shall fully indemnify, defend, and hold CITY harmless from any liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of any acts or omissions on the part of COUNTY under or in connection with any work, authority, or jurisdiction delegated to or determined to be the responsibility of COUNTY under this REVISED AGREEMENT.
- i. In contemplation of the provisions of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement (as defined in Section 895 of said Code), each of the parties hereto, pursuant to the authorization contained in Sections 895.4 and 895.6 of said Code, will assume the full liability imposed upon it or any of its officers, agents, or employees by law for injury caused by any act or omission occurring in the performance of this REVISED AGREEMENT to

the same extent that such liability would be imposed in the absence of Section 895.2 of said Code. To achieve the above-stated purpose, each of the parties indemnifies and holds harmless the other party for any liability, cost, or expense that may be imposed upon such other party solely by virtue of said Section 895.2. The provisions of Section 2778 of the California Civil Code are made a part hereof as if incorporated herein.

- j. It is understood and agreed that the provisions of Assumption of Liability Agreement No. 33586 between CITY and COUNTY, adopted by the Board of Supervisors on March 15, 1978, and currently in effect, are inapplicable to this REVISED AGREEMENT.
- k. This REVISED AGREEMENT was prepared by both parties.
- l. The provisions of this REVISED AGREEMENT shall be interpreted and enforced pursuant to the laws of the State of California.
- m. Any correspondence, communication, or contact concerning the REVISED AGREEMENT shall be directed to the following:

To CITY:

Mr. Tony Antich  
City Engineer  
City of Santa Monica  
1685 Main Street  
Santa Monica, CA 90401

With a copy to:

Ms. Marsha Jones Moutrie  
City Attorney  
1685 Main Street, Room 310  
Santa Monica, CA 90401

To COUNTY:

Mr. Donald L. Wolfe  
Director of Public Works  
County of Los Angeles  
Department of Public Works  
P.O. Box 1460  
Alhambra, CA 91802-1460

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IN WITNESS WHEREOF, the parties hereto have caused this REVISED AGREEMENT to be executed by their respective officers, duly authorized, by the CITY OF SANTA MONICA on June 20, 2006, and by the COUNTY OF LOS ANGELES on \_\_\_\_\_, 2006.

COUNTY OF LOS ANGELES,  
acting on behalf of the Los Angeles  
County Flood Control District

ATTEST:

SACHI A. HAMAI  
Executive Officer of the  
Board of Supervisors of the  
County of Los Angeles

By \_\_\_\_\_  
Mayor, Board of Supervisors

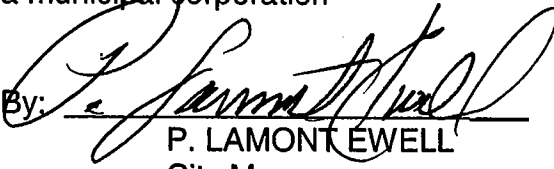
By \_\_\_\_\_  
Deputy

APPROVED AS TO FORM:

RAYMOND G. FORTNER, JR.  
County Counsel


By   
Deputy

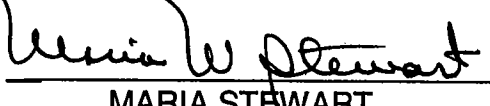
CITY OF SANTA MONICA,  
a municipal corporation

By:   
P. LAMONT EWELL  
City Manager

APPROVED AS TO FORM:

ATTEST:

By:   
MARSHA JONES MOUTRIE  
City Attorney

By:   
MARIA STEWART  
City Clerk